

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION**

**CHARLES MITCHELL, #09083221,  
Plaintiff,**

**v.**

**DALLAS COUNTY SHERIFF  
DEPARTMENT, et al.,  
Defendants.**

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**3:12-CV-1960-O-BK**

**SUPPLEMENTAL FINDINGS, CONCLUSIONS AND RECOMMENDATION  
OF THE UNITED STATES MAGISTRATE JUDGE**

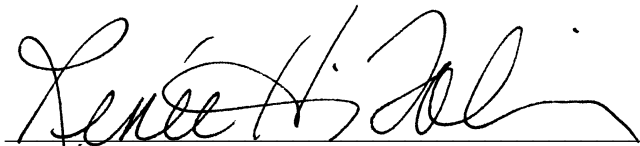
In May 2012, Plaintiff, a Dallas County jail inmate, filed a *pro se* petition in the 14th Judicial District Court of Dallas County alleging federal and state constitutional violations. In July 2012, shortly after Defendants removed the case to federal court, the undersigned recommended that the federal claims be summarily dismissed with prejudice as frivolous, that any remaining state claims be dismissed without prejudice, and that sanctions be imposed because Plaintiff filed this lawsuit in state court to circumvent a November 2011 three-strike order. Plaintiff timely objected claiming the Magistrate Judge's recommendation deprived him of the 21-day period to file a certificate of interested persons. (Doc. 9, 10). Subsequently, on December 28, 2012, Plaintiff filed a *Motion to Clarify and Exert Texas (State) Constitutional Claim of Violations and Withdraw All United States Constitutional Claims in the Original Complaint*. (Doc. 11). In essence, he seeks to dismiss the federal claims and remand the state claims.

In dismissing his federal claims, Plaintiff again attempts to circumvent the three-strike bar, which he initially sought to avoid by filing in state court. Plaintiff also tries to avert the additional sanction that the undersigned recommended because of his attempt to avoid the three-

strike bar. In addition, since the undersigned recommended that the state law claims be dismissed without prejudice, Plaintiff is not precluded from re-filing any state-law claims in state court. Accordingly, Plaintiff's requests to dismiss his federal claims and remand his state claims should be denied.

For the foregoing reasons, it is recommended that Plaintiff's *Motion for Right to File Certificate of Service and Motion to Clarify and Exert Texas (State) Constitutional Claim of Violations and Withdraw All United States Constitutional Claims in the Original Complaint* (Doc. 10, 11) be **DENIED**.

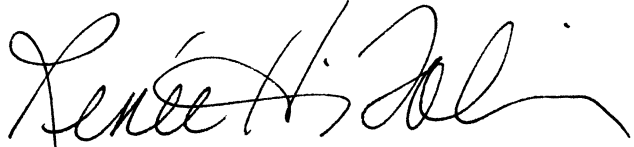
SIGNED January 7, 2013.



RENÉE HARRIS TOLIVER  
UNITED STATES MAGISTRATE JUDGE

**INSTRUCTIONS FOR SERVICE AND  
NOTICE OF RIGHT TO APPEAL/OBJECT**

A copy of this report and recommendation will be served on all parties in the manner provided by law. Any party who objects to any part of this report and recommendation must file specific written objections within 14 days after being served with a copy. *See* 28 U.S.C. § 636(b)(1); FED. R. CIV. P. 72(b). In order to be specific, an objection must identify the specific finding or recommendation to which objection is made, state the basis for the objection, and specify the place in the magistrate judge's report and recommendation where the disputed determination is found. An objection that merely incorporates by reference or refers to the briefing before the magistrate judge is not specific. Failure to file specific written objections will bar the aggrieved party from appealing the factual findings and legal conclusions of the magistrate judge that are accepted or adopted by the district court, except upon grounds of plain error. *See Douglass v. United Services Automobile Ass'n*, 79 F.3d 1415, 1417 (5th Cir. 1996).



RENÉE HARRIS TOLIVER  
UNITED STATES MAGISTRATE JUDGE